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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**NORTHERN DIVISION**

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**HARRIS RESEARCH, INC.,**

**Plaintiff,**

**v.**

**RAY PERRINE, JEFF LYDON, LISA SMITH, and JOHN DOES I-X,**

**Defendants.**

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**JEFF LYDON and LISA SMITH,**

**Counterclaim Plaintiff,**

**v.**

**HARRIS RESEARCH, INC.,**

**Counterclaim Defendant.**

**ORDER ADOPTING REPORT AND  
RECOMMENDATION**

**Case No. 1:05CV136 CW**

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This case was originally assigned to United States District Court Judge Dale A. Kimball, who then referred it to United States Magistrate David Nuffer under 28 U.S.C. § 636(b)(1)(B). The case is now assigned to United States District Court Judge Clark Waddoups.

On October 10, 2008, the Magistrate Judge issued, among other things, a Report and Recommendation, recommending to the district court judge that (1) the Motion for Appointment of Special Master and Motion for Special Master Province be granted in part; (2) the Motion to Overturn Summary Judgment be denied; (3) the Motion to Rule the Asserted Patents Invalid and Unenforceable be denied; and (4) the Motion for Stay or Lifting of the Injunction be denied. *See*

Docket # 112.

The parties were given ten days after being served with a copy of the Report and Recommendation to file specific, written objections. Because the *pro se* Defendants are not on the court's electronic filing system, the court sent the Report and Recommendation to the Defendants through the United States Postal Service on October 10, 2008. Presumably out of an abundance of caution, Plaintiff also mailed the Report and Recommendation to Defendants on October 13, 2008. *See* Docket # 113. Pursuant to Rule 6(a) of the Federal Rules of Civil Procedure, Defendants had to file any objections to the Report and Recommendation by no later than October 30, 2008, but no objections were filed by that date.<sup>1</sup>

After having reviewed the file *de novo*, the Court hereby APPROVES AND ADOPTS the Magistrate Judge's Report and Recommendation in its entirety. Accordingly, (1) the Motion for Appointment of Special Master [docket # 85] and Motion for Special Master Province [docket # 88] are GRANTED in part, as set forth more specifically in the Report and Recommendation; (2) Defendants' Motion to Overturn Summary Judgment [docket # 88] is DENIED; (3) Defendants' Motion to Rule the Asserted Patents Invalid and Unenforceable [docket # 88] is DENIED; and (4) Defendants' Motion for Stay or Lifting of the Injunction [docket # 88] is DENIED.

By no later than December 3, 2008, Plaintiff and Defendants, respectively, are directed to deposit with the Court a sum of \$5,000, as prepayment for the services of the Special Master,

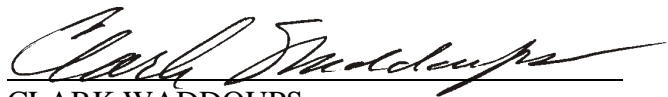
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<sup>1</sup> On November 6, 2008, Defendants filed a renewed Motion to Appoint Counsel and for a Delay in Progression of Case. *See* Docket # 115. That motion will be addressed in a separate Order.

along with a written commitment to pay one half the cost of the additional compensation of the Special Master not covered by the initial deposit. In addition, by no later than December 10, 2008, Plaintiff and Defendants are directed to provide nominations for a qualified Special Master, including information sufficient to determine the qualifications of the nominee, a description of the nominee's relevant professional experience during the past ten years; the proposed terms of compensation for the nominee, and any concerns the nominee has with the scope of service, as set forth in the Report and Recommendation. Objections, if any, to a party's nomination shall be filed no later than December 19, 2008. If either party fails to pay the \$5,000 by the date required, the other party may move the Court for appropriate relief.

DATED this 12<sup>th</sup> day of November, 2008.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Clark Waddoups", is written over a horizontal line.

CLARK WADDOUPS  
United States District Judge